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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,109	11/25/2003	Frederic Cretinon	P24471	4495

7055 7590 08/04/2005

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EXAMINER	
PATTERSON, MARIE D	
ART UNIT	**PAPER NUMBER**
3728	

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/720,109	CRETINON, FREDERIC	
	Examiner	Art Unit	
	Marie Patterson	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12,14-18 and 20* is/are rejected.

7)☒ Claim(s) *13 and 19* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 5-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cretinon (6000148).

Cretinon shows a shoe comprising an upper (10), a bottom assembly (2) comprising a wear sole (3), a first reinforcement (4), a second upper reinforcement (30 and side/horizontal portions of 20), and a flexible coupling (vertical portions of element 20) inasmuch as applicant has claimed and defined such in the claims.

3. Claims 1-3, 5-9, 16, and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rudy (4506460).

Rudy shows a shoe comprising an upper (41), a wear sole (43), a first reinforcement element (51) which is spaced from a second upper reinforcment element (53), and a flexible foam coupling (45) as claimed.

In reference to the use of adhesive for attaching the elements to the flexible coupling, Rudy clearly intends the use of adhesive to be the well known and inherent method for attaching the elements (see column 10 lines 40-45).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 4, 10-12,14-16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudy (4,506,460).

Rudy shows a shoe substantially as claimed except for the exact materials for the intermediate sole and providing a depression in the intermediate sole for the first reinforcement. Rudy does show a depression receiving the second upper reinforcement element (shown in figure 7a). It would have at least been obvious if not inherent that the first reinforcement is received in a depression similar to the arrangement of attachement of the second reinforcement element. In reference to the exact material for the intermediate sole, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use EVA for the intermediate sole, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

In reference to the use of adhesive for attaching the elements to the flexible coupling, if one considers Rudy to not clearly disclose the use of adhesive, Rudy clearly intends/suggests/makes obvious the use of adhesive to be the well known and inherent method for attaching the elements (see column 10 lines 40-45). It would have been obvious to use adhesives to attach the sole elements to one another as is well known and conventional to provide secure, inexpensive attachment of the elements to one another.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rudy in view of Luthi (6199303).

Rudy shows a shoe comprising an upper (41), a wear sole (43), an upper (i.e. second) reinforcment element (53), and a flexible foam intermediate sole (45) substantially as claimed except for a (first) sole reinforcement element. Luthi teaches providing a sole reinforcement element (10) located in a sole assembly in any layer (see column 5 lines 25-35). It would have been obvious to provide a sole reinforcement in any layer of the sole of Rudy to provide reinforcement and motion control to the entire length of the foot. In reference to the exact spacing of the two reinforcemen t elements, since Luthi states that the exact layered placement of the sole reinforcement is not important and the claimed separation distance of less than 5mm is considered to be a common range for a thin layer of a sole element, it would have been obvious to space the elements less than 5mm apart.

Allowable Subject Matter

7. Claims 13 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see **http://pair-direct.uspto.gov**. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at *(572)272-8300* **(FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.

Marie Patterson
Primary Examiner
Art Unit 3728